

ESTTA Tracking number: **ESTTA873998**

Filing date: **01/29/2018**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following parties has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Purple Wine Company, LLC		
Entity	Limited Liability Company	Citizenship	CA
Address	9119 Graton Road Graton, CA 95444 UNITED STATES		

Name	Graton Spirits Company, LLC		
Entity	Limited Liability Company	Citizenship	CA
Address	9119 Graton Road Graton, CA 95444 UNITED STATES		

Attorney information	David Commins Commins & Knudsen, P.C. 492 9th Street, Suite 200 Oakland, CA 94607 UNITED STATES Email: kit@commins.com, david@commins.com Phone: 5108232208		
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Registration Subject to Cancellation

Registration No.	4894709	Registration date	02/02/2016
Registrant	Baughman Spirits & Beverage, LLC 11460 Sunrise Gold Circle, Suite C Attn: Greg Baughman Rancho Cordova, CA 95742 UNITED STATES Email: gbaughman@goldriverdistillery.com		

Goods/Services Subject to Cancellation


Class 033. First Use: 2014/04/01 First Use In Commerce: 2014/07/01 All goods and services in the class are subject to cancellation, namely: Gin; Vodka

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration	3752727	Application Date	09/27/2007
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No.			
Registration Date	02/23/2010	Foreign Priority Date	NONE
Word Mark	WHEELHOUSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2010/01/05 First Use In Commerce: 2010/01/05 Wines		

Attachments	77290708#TMSN.png(bytes) Petition to Cancel 1.29.18.pdf(104360 bytes)
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Signature	/David Commins/
Name	David Commins
Date	01/29/2018

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10 Purple Wine Company, LLC and
11 Graton Spirits Company, LLC

12 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
13 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

14 PURPLE WINE COMPANY, LLC.,
15 GRATON SPIRITS COMPANY, LLC,

16 Petitioners,

17 vs.

18 BAUGHMAN SPIRITS AND
19 BEVERAGES, INC., dba GOLD RIVER
20 DISTILLERY,

21 Respondent.

Proceeding No.

Registration No. 4894709

PETITION TO CANCEL

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Petitioners are Purple Wine Company, LLC and its wholly owned subsidiary Graton Spirits Company, LLC (collectively, Petitioner). Petitioner believes it is being or will be damaged by the continued registration of the mark identified in Registration No. 4894709 and hereby petitions the Trademark Trial and Appeal Board to cancel the same pursuant to Section 14 of the Lanham Act (15 U.S.C. § 1064). As grounds for this Petition, Petitioner alleges that:

1. This is a Petition to Cancel based upon a likelihood of consumer confusion resulting from Respondent’s willful and unauthorized use of colorable imitations of Petitioner’s incontestible trademark, WHEELHOUSE, as more fully set forth herein. Petitioner seeks to cancel Respondent’s trademark, WHEEL HOUSE (Registration No. 4894709), because it is likely to cause consumer confusion and infringes Petitioner’s trademark.

2. Petitioner Purple Wine Company, LLC is a California limited liability company with its principal place of business at 9119 Graton Road, Graton, California 95444.

3. Petitioner Graton Spirits Company, LLC is a California limited liability company with its principal place of business also at 9119 Graton Road, Graton, California 95444. Graton Spirits Company, LLC is a wholly owned subsidiary of Purple Wine Company, LLC.

4. Upon information and belief, Respondent Baughman Spirits and Beverage, LLC (Baughman) is a California limited liability company with its principal place of business at 11460 Sunrise Gold Circle, Suite C, Rancho Cordova, California 95742. On information and belief, Baughman operates under the trade name Gold River Distillery Limited Liability Company (GRD).

1 4. Petitioner Purple Wine Company is the owner of the trademark
2 WHEELHOUSE, U.S. Trademark Registration No. 3752727 for wine in International Class 33,
3 issued on February 23, 2010. Petitioner has continuously used the WHEELHOUSE Mark in the
4 marketplace on and in association with wine since January 2010.

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6 5. Petitioner's WHEELHOUSE Mark for wine is not descriptive when used
7 in association with wine and therefore is inherently distinctive.

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9 6. Petitioner produces wine under the WHEELHOUSE Mark. Since
10 January 2010, it has offered and sold WHEELHOUSE nationwide. Petitioner's estimated sales
11 are more than 275,000 bottles of WHEELHOUSE wine nationwide.

12
13 7. Since 2010, Petitioner's net sales of its WHEELHOUSE wine have been
14 in excess of 1.77 million dollars (\$1,770,000).

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16 8. Since 2010, Petitioner has expended substantial sums in advertising and
17 marketing its WHEELHOUSE wine, including direct marketing, promotions, sponsorships, wine
18 tastings, catalog and print advertisements, website production, and point of sale materials.

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20 9. Since September 6, 2011 Purple Wine Company has owned the Service
21 Mark WHEELHOUSE in International Class 35. (Registration No. 4023311)

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23 10. Petitioner's WHEELHOUSE wines have received numerous accolades
24 and awards nationally.

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26 11. As evidenced by Petitioner's sales and accolades for the WHEELHOUSE
27 wine, Petitioner owns extremely valuable goodwill in its WHEELHOUSE mark and the mark
28 has extraordinary financial value.

1 12. As a result of the wide, continuous advertising and distribution of
2 Petitioner’s WHEELHOUSE wine since as early as January 2010, the WHEELHOUSE Mark
3 has also acquired distinctiveness among wine consumers.

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5 13. On November 14, 2017, Petitioner Graton Spirits Company filed an
6 application to register its WHEELHOUSE Mark in International Class 33 for spirits/distilled
7 spirits (Serial No. 87684711). The application was based on an intent to use the mark in
8 commerce. Use of the mark for distilled spirits such as gin, vodka and whiskey is in the natural
9 zone of expansion from Petitioner’s use of the mark for wines.

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11 14. GRD produces, among other products under the mark WHEEL HOUSE,
12 American Dry Gin, Sacramento Vodka, and Absinthe Verte. Apparently, it will soon produce a
13 whiskey as well under the same mark.

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15 15. On May 13, 2015, well after Petitioner established its rights in the
16 WHEELHOUSE Mark, Baughman filed U.S. Trademark Application Serial No. 86628402 for
17 the mark WHEEL HOUSE for gin and vodka in International Class 33. It identified its first date
18 of use in commerce as July 1, 2014, also well after Petitioner had established its rights in the
19 WHEELHOUSE Mark. On February 2, 2016 the WHEEL HOUSE mark was registered to
20 Baughman and its dba GRD, Registration No. 4894709.

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22 16. On November 14, 2017, Petitioner’s counsel sent to GRD a letter
23 requesting that GRD not use the WHEEL HOUSE mark on the basis that it infringed Petitioner’s
24 incontestable WHEELHOUSE Mark. On December 6, 2017, GRD’s CEO acknowledged receipt
25 of such letter, but would not agree on behalf of GRD to cease using the mark.

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27 17. Respondent’s WHEEL HOUSE mark is confusingly similar to Petitioner’s
28 WHEELHOUSE Mark, given that the marks are similar in sight and sound, include the same

1 dominant term “WHEELHOUSE,” and are in the natural zone of extension in International Class
2 33 for wine, and are used on identical goods as GSC’s intended use for WHEELHOUSE (App.
3 No. 87684711), namely California small batch Gin, Vodka and Whiskey.

4
5 18. Use of the WHEEL HOUSE mark by Respondent is likely to confuse
6 consumers into believing that Respondent’s WHEEL HOUSE gin, vodka and whiskey are
7 affiliated with, associated with, connected to, or sponsored by Petitioner and its popular
8 WHEELHOUSE wine, as well as Petitioner’s Gin, Vodka and Whiskey, and Respondents will
9 unjustly benefit from such association.

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11 19. Respondent’s infringing use of the mark WHEEL HOUSE is likely to
12 cause consumer confusion and has and will continue unjustly to increase the profitability of
13 Respondent’s WHEEL HOUSE brand to the detriment of Petitioner and at no cost to
14 Respondent.

15
16 20. Petitioner will be further harmed as consumers will purchase the WHEEL
17 HOUSE spirits believing them to be affiliated with, associated with, connected to, or sponsored
18 by Petitioner and will thereby forego purchases of the WHEELHOUSE spirits, resulting in loss
19 of sales to Petitioner from Respondent’s unfair competition.

20
21 21. Respondent’s continued infringing use of the confusingly similar WHEEL
22 HOUSE mark will financially harm Petitioner by diminishing the value of Petitioner’s
23 WHEELHOUSE Mark.

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25 22. Respondent’s continued use of the WHEEL HOUSE mark will also
26 diminish the value of Petitioner’s WHEELHOUSE Mark and endanger the ability of Petitioner’s
27 WHEELHOUSE Mark to serve as a unique and distinctive source indicator for Petitioner and
28 Petitioner’s goods.

1 23. Unless cancelled by this Court, Respondents will continue unfairly to
2 compete with Petitioner by using the WHEEL HOUSE mark, wherefore Petitioner is without
3 adequate remedy at law.

4
5 24. Respondent's use of WHEEL HOUSE is a knowing infringement of
6 Petitioner's WHEELHOUSE trademark.

7
8 25. Respondent's above-averred actions constitute use in commerce of a
9 reproduction, counterfeit, copy or colorable imitation of Petitioner's registered mark in
10 connection with the sale, offering for sale, distribution or advertising of goods or services on or
11 in connection with which such use is likely to cause consumer confusion, deception or mistake
12 as to source, sponsorship or approval of the Respondent's aforesaid goods or services in
13 violation of 15 U.S.C. §1114.

14
15 26. Respondent's above-averred actions constitute use in commerce of a
16 word, name or device and false designation of origin which is likely to cause confusion, or to
17 cause mistake, or to deceive as to affiliation, connection or association of Respondents with
18 Petitioner or as to the origin, sponsorship or approval of the goods offered in connection
19 therewith in violation of 15 U.S.C. §1125(a).

20
21 THEREFORE, Petitioner requests that Respondent's trademark be cancelled.

22
23 DATED: January 23, 2018.

COMMINS & KNUDSEN
Professional Corporation

24
25 By: /David H.S. Commins/
26 David H.S. Commins, attorney for
27 Petitioners, Purple Wine Company, LLC
28 and
 Graton Spirits Company, LLC